FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 292/2007
(Shaikh Lateef Shaikh Ameer Vs. Intiazbi Shaikh Abbas)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr. Mishra, Adv. for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 4th September, 2007.

Heard the learned counsel for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff against defendant for eviction and separate possession of the suit property.

The plaintiff further sought a permanent injunction restraining the defendant from making construction on the northern side of the house of the plaintiff and a mandatory injunction directing the defendant to bring the western wall of the suit house to its original shape. The plaintiff claimed to be the owner of the suit property which was purchased by her by a registered sale-deed dated 15.11.1962. Since the defendant was her relative, she permitted the defendant to occupy one of the rooms of the house for a period of six months about 5 to 6 years prior to the institution of the suit. After lapse of period of six months, the defendant did not vacate and also further did not vacate the suit premises in

spite of issuance of notice. Hence, the plaintiff filed the present suit.

The defendant contested the suit filed by the plaintiff by filing the written statement. The defendants pleaded that his deceased father had purchased the suit room and open space nearly 40 years ago from one Hanwatkar by sale-deed and the defendant was residing therE since his childhood. According to the defendant, the plaintiff had no concern with the suit room. It was further pleaded that the plaintiff took disadvantage of the defendant's relation with her husband and tried to grab the room. The defendant, therefore, prayed for dismissal of the suit.

The trial Court dismissed the suit of the plaintiff on the ground that the plaintiff had failed to prove that the defendant was in wrongful occupation of one room on the northern side of the house of the plaintiff. The trial Court, however, held that the plaintiff had proved that she was the owner of the suit house described in paragraph no.1 of the plaint. The trial Court, therefore, did not grant the relief of permanent and mandatory injunction in favour of the plaintiff. The trial Court held that the plaintiff had not established that the area of her house extended up to the suit room.

In an appeal preferred by the plaintiff against the judgment passed by the trial Court, the

first appellate Court reappreciated the material evidence on record. The first appellate Court recorded a clear finding of fact that the plaintiff had purchased the house property and the trial Court had also held so by answering the first issue in the affirmative and in favour of the plaintiff. The first appellate Court observed that the defendant had not challenged the ownership of the plaintiff over the house though a finding was recorded in that regard in favour of the plaintiff. The first appellate Court then considered the fact that the defendant had come up with a specific case that his father had purchased the disputed room from one Hanwatkar but, no sale-deed or any document of title was produced by the defendant on record to show his ownership over the suit property. The Court appreciated the evidence of the witnesses examined on behalf of the plaintiff as well as the defendant to hold that the plaintiff had succeeded in proving that the defendant was permitted to occupy the suit room. The Court then observed that there was no question of the defendant claiming the ownership by adverse possession as the defendant had claimed title in himself by pleading that his father had purchased the suit property from one Hanwatkar. The Court categorically observed that the defendant had placed nothing on record to show that he is the owner of the disputed site.

The findings recorded by the first appellate

Court are pure findings of fact and the same are based on a proper appreciation of the material evidence on record. The first appellate Court being a final fact finding Court was entitled to reappreciate the evidence to answer the issues in favour of the plaintiff. A submission was made on behalf of the appellant that the trial Court had considered the evidence of surveyor/Court commissioner for holding that the plaintiff had not established that the area of her house extended up to the suit room but the first appellate court wrongly ignored the evidence of the Court commissioner. The submission made on behalf of the appellant is not acceptable for the reason that the first appellate Court rightly held that the Court commissioner's evidence was not material as the plaintiff had proved her ownership over the property and the defendant had failed to prove his ownership, as pleaded by him. The observations of the first appellate Court are neither erroneous nor perverse. The plaintiff had based his claim on the basis of the title. The defendant also claimed title over the suit property. The trial and the appellate Court, on an appreciation of the evidence on record had held that the plaintiff had proved her ownership over the house described in plaint paragraph no.1. In view of the findings recorded by the first appellate Court on the basis of relevant evidence, the appellate Court rightly thought that the evidence of the Court commissioner/

surveyor was not material for deciding the issue of ownership of the parties over the suit property. The judgment reported in **2000(1) SCC 434** and specially paragraph nos.10 to 13 thereof which are relied on by the appellant, are not applicable to the facts of the case. This is not a case where the appellate Court had omitted a vital piece of evidence or had considered an inadmissible piece of evidence which could have led to a different conclusion.

Since no substantial question of law arises for consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

APTE